UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD HALL LIGHTFOOT,

Plaintiff,

v.

92 Civ. 6411 (HB)

UNION CARBIDE CORPORATION, A.W. LUTZ, PRESIDENT, INDUSTRIAL CHEMICALS DIVISION, and W.E. SHACKELFORD, VICE PRESIDENT, INDUSTRIAL CHEMICALS DIVISION,

Defendants.

June 23, 1995
9:40 a.m.

Before: HON. HAROLD BAER, JR., District Judge

APPEARANCES

WISEHART & KOCH
Attorneys for Plaintiff
ARTHUR M. WISEHART
MICHAEL H. PRINCE

MCDERMOTT, WILL & EMERY
Attorneys for Defendants
JOEL E. COHEN
NANCY I. SOLOMON

(In open court, jury not present)

THE COURT: I just want to read a response to what it was that we talked about the last time that we were together and clarify the decision with respect to the plaintiff entitlement to pretermination damages for alleged pay disparity and back pay awards are designed to address economic injury that the plaintiff has suffered as a result of discriminatory conduct, *Rasimas v Michigan Department of Mental Health*, 714 F.2d 614 and 626.

Accordingly, back pay includes any raises which the plaintiff would have received but for discrimination, because Judge Patterson previously ruled in this case that summary judgment was appropriate in the defendants' favor in all causes of action as to Carbide's liability for back pay. In his opinion, July 25, last year, Lightfoot is not entitled to pretermination damages for alleged pay disparity.

During our conference on June 20th, I am just reiterating what we resolved on that occasion, that we all, both parties, agree, that in light of my ruling, Lightfoot may not pursue pretermination damages for alleged pay disparity; and in light of Judge Patterson's prior rulings that Lightfoot may not seek back pay or front pay damages, Lightfoot has no compensable damages under ADEA. The plaintiff has, therefore, agreed that the ADEA cause of action must be dismissed, and both parties further agreed that plaintiff's sole remaining claims for compensatory damages under the New York State Executive Law, and it's that law and the law applicable to it that we will charge the jury at the end of this case.

The only housekeeping matter I would like to take up is that I would like, if we could to go, even though we are starting late, only to three o'clock, primarily because I have a variety of other problems; and therefore, I am going to see if I can convince the jury in exchange for getting out an hour or two earlier, they are ready to have precious few recesses.

My thought is that maybe we have a half an hour from 12 to 12:30, and then we would simply go until 3 o'clock. If that shocks your conscience, anybody, then you ought to let me know and I will not mention it to the jury.

MR. WISEHART: Judge, on the ruling you just made, we don't agree that the ADEA should be dismissed. We take exception to the ruling of Judge Patterson.

THE COURT: I know. I understand that, but I'm only doing what it is that you agreed had to happen in light of that decision.

MR. WISEHART: We take exception to the decision for the purpose of the presentation of this trial. We understand what you say, and we will comply with it.

THE COURT: You realize essentially what he said is the law of the case, and I really have no choice but to follow it?

MR. WISEHART: We understand that's your ruling.

THE COURT: You have a disagreement with that concept?

MR. WISEHART: Well, we have had a number of letters that we have exchanged on the issue.

THE COURT: On the issue of the rule of the case?

MR. WISEHART: Yes.

THE COURT: And you have come out saying that it's a good thing for Baer to do something different than the language in Patterson's —

MR. WISEHART: No. What we said was Judge Patterson admitted that he had never focused on that precise issue regarding pretermination damages.

THE COURT: Right. I am familiar with that concept. I am simply repeating what it is or asking that we all understand that what it is that I have interpreted his decision

to mean binds me, and as a consequence, there is no ADEA cause here, according to your thinking and mine.

MR. WISEHART: Given that that's your interpretation of his decision, which we disagree with, with all due respect.

THE COURT: But in fact, you understand that we are not going into the ADEA simply as a consequence of his ruling and my adoption or interpretation thereof?

MR. WISEHART: Exactly.

THE COURT: Bring in the jury.

(Continued on next page)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD HALL LIGHTFOOT,

Plaintiff,

– against –

UNION CARBIDE CORPORATION, A.W. LUTZ, PRESIDENT, INDUSTRIAL CHEMICALS DIVISION and W.E. SHACKELFORD, VICE PRESIDENT, INDUSTRIAL CHEMICALS DIVISION,

Defendants.

92 CIV 6411 (HB)

DECISION AND ORDER

Hon. Harold Baer, Jr.

I have reviewed the plaintiff's motion for recusal in some detail and while the temptation to recuse myself is close to overwhelming, my obligation to follow the law must prevail and since there was not a scintilla of evidence to support recusal, that motion is denied. Parenthetically, it is hard for this Court to fathom the plaintiff's view that this motion is even timely but perhaps I've missed something or the plaintiff is otherwise motivated. Turning to the motion for vacatur, it lacks any factual or legal basis and it too must be denied. This constitutes the decision and order of the Court.

/s/ Harold Baer
Harold Baer, Jr.
U.S.D.J.

December 8, 1995

Age Discrimination in Employment Act

29 U.S.C. § 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that —

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

Employee Retirement Income Security Act

29 U.S.C. § 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C.A. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.